United Electric Cooperative, Inc. *and* International Brotherhood of Electrical Workers, Local 1124, AFL-CIO. Case 6-CA-13919

1 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 5 November 1981 Administrative Law Judge Robert M. Schwarzbart issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings, and conclusions[2] and to adopt the recommended Order.

Subsequent to the issuance of the judge's decision, the Supreme Court issued its decision in *Metropolitan Edison Co. v. NLRB*, 103 S.Ct. 1467 (1983), in which it held that an employer's imposition of more severe sanctions on union officials than on other employees for only participating in an unlawful work stoppage violates Section 8(a)(3) of the Act, unless the union has clearly and unmistakably waived this protection. Since the record in this case indicates that the Union has not waived this protection, we agree with the judge that the Respondent violated Section 8(a)(3) of the Act by suspending union steward Lockett for a week longer than other employees who participated in the strike.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Electric Cooperative, Inc., DuBois, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In view of our finding below, it is unnecessary for us to consider whether the judge erred in refusing to admit certain rebuttal testimony offered by the Respondent concerning the parties' 1978 contract negotiations.

[2] We agree with the judge's conclusion that the picket line set up by the Operating Engineers was unlawful and, thus, the conduct of the Respondent's employees in refusing to cross it was not protected. *Chevron U.S.A.*, 244 NLRB 1081, 1086-87 (1979). Accordingly, the Respondent did not violate Sec. 8(a)(1) of the Act by disciplining the employees for this conduct. In view of this finding, it is unnecessary for us to pass on whether the Charging Party Union waived the employees' Sec. 7 right to engage in a sympathy strike.

DECISION

STATEMENT OF THE CASE

ROBERT M. SCHWARZBART, Administrative Law Judge: This case was heard on July 6 and 7, 1981, in DuBois, Pennsylvania, pursuant to a charge filed on October 8, 1980,[1] by International Brotherhood of Electrical Workers, Local 1124, AFL-CIO, herein called the Union, and complaint issued November 28. The complaint alleges that United Electric Cooperative, Inc., herein called the Respondent, violated Section 8(a)(1) of the Act by issuing disciplinary letters to and suspending 13 employees, represented by the Union, for 4 working days because of their refusal to cross a picket line established by another union at the Respondent's DuBois facility. The complaint further alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing a disciplinary letter to and suspending Clayton A. Lockett for 9 working days because, in his status as union steward, he had refused to cross the above-described picket line. The Respondent, in its answer, denies the commission of unfair labor practices.

At the hearing, the Respondent was represented by counsel and all parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Briefs, filed by the General Counsel and the Respondent, have been carefully considered.

Upon the entire record of the case and my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a corporation with an office and place of business located in DuBois, Pennsylvania, at all times material herein, has been engaged in the transmission, distribution, and sale of electricity. During the 12-month period ending September 30, 1980, a representative period, the Respondent, in the course and conduct of its operations, derived gross revenues in excess of $500,000. During this period of time, the Respondent, in the course and conduct of its operations, purchased and received products, goods, and materials valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania for use within the Commonwealth of Pennsylvania.

From the foregoing conceded facts, I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The answer admits and I find that International Brotherhood of Electrical Workers, Local 1124, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates hereinafter are within 1980 unless otherwise specified.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent, an electric cooperative, is the sole supplier of electric power to over 14,000 members in a 7,000-square-mile area of western Pennsylvania. The Respondent also supplies electrical energy to the United States Government at the DuBois, Pennsylvania airport, including the facility operated there by the Federal Aviation Administration. As a cooperative, regulated by the Rural Electrification Administration and the U.S. Department of Agriculture, it is a membership organization owned by those whom it serves, its members also being its customers. While the Respondent's facility at DuBois is the only one involved in this proceeding, the Respondent also has locations in Clearfield and Brookville, Pennsylvania. The Respondent's general manager, Donald A. Widder, its director of engineering and operations, James Corbett, and Supervisor Alex Porter are based at the DuBois facility.

Local 521, International Brotherhood of Electrical Workers, AFL-CIO, sister local to the Union herein, Local 1124, was the collective-bargaining representative of the Respondent's production and maintenance employees at DuBois, Clearfield, and Brookville until replaced by the Union as bargaining agent approximately 5 or 6 years ago. The Union and the Respondent, during the events considered herein, were parties to a collective-bargaining agreement, effective October 1, 1978, until September 30, 1980. Article II, section 5 of this contract provides as follows:

> The Union and its members agree that during the continuance of this Agreement, there should be no strikes or other concerted cessations of, or disruption of, work by the Union or its members. The Cooperative on its part agrees that during the continuance of this Agreement, there shall be no lock outs of the Union or any of its members. It is the mutual desire of both parties to provide uninterrupted service to the Cooperative membership.

Also referred to in the record is article II, section 4(d), which provides, in relevant part, that:

> In the interest of safety, continuity of service and efficient and orderly operation, the Union agrees that its members will abide by the Cooperatives' rules and regulations. Accordingly, it is understood by both the Union and the Cooperative that all rules and regulations, now in effect or as adopted or changed in the future, shall be strictly enforced and observed at all times.

Among the Respondent's rules and regulations referred to in the above contract provision is a requirement that employees normally work from 7:30 a.m. to 4 p.m., and article VIII, section 1(a) of the contract which, in relevant part, provides:

> Regular employees of the Cooperative covered by this Agreement who are NON-SHIFT will work regular schedules five (5) consecutive 8 hour days per week, Monday through Friday.[2]

All the above-quoted provisions of the most recent collective-bargaining agreement originally had been incorporated in the first contract between the Respondent and Local 521, effective 1972 to 1973.

B. *The Facts*

1. The events of June 13

On June 13, Lester E. Smiley Jr., business representative of International Union of Operating Engineers, Local 66, AFL-CIO,[3] established a picket line at the Respondent's DuBois facility, directed at Harold N. Leach, a nonunion contractor doing excavation work for a building the Respondent was erecting on that property. Rockaway, Incorporated, the Respondent's general contractor for the erection of this bulding, had retained Leach as the excavation subcontractor on the project. The two pickets placed by Smiley on June 13 were situated in front of the entrance marked "Unilec—[4] Employees' Entrance Only." A sign at a second gate specified "For Contractors' Employees Only." The establishment of separate gates for employees of the Respondent and those of contractors had been announced in a memorandum, dated May 27, from the Respondent's general manager, Donald A. Widder, to all employees. This memorandum, in relevant part, declared that:

> We are due to embark on a needed building addition at United Electric Cooperative.
>
> Due to the confusion and certain legal ramifications, we must designate certain gate areas for the employees, as well as the general contractor, to use during the period of construction.
>
> To minimize the confusion and legal aspect, I have designated the chained gate between the service building and the office on the north side as a contractor's gate (to be so marked) and no employees shall be permitted to use this gate from June 1 on.
>
> The chain gate between the service building and the office on the south side entrance to the property will be designated United Electric employees' gate (also to be so marked) and will be utilized for ingress and egress for the service building as has been our past practice.
>
> To insure that said gates are used accordingly, I will have to administer disciplinary action to those found in violation of this requirement.

Smiley testified that earlier, in May, he had contacted a representative of the Respondent whom he remem-

[2] Although this contract provision also specifies work hours between 7 a.m. and 5 p.m. with a lunch period not to exceed 1 hour, it is clear from the testimony that normal working hours for unit employees were from 7:30 a.m. to 4 p.m.

[3] Local 66 does not have a collective-bargaining relationship with the Respondent.

[4] "Unilec" is a frequently used reference to United Electric Cooperative.

bered only as McDonald.[5] During this conversation, Smiley informed the Respondent's official that there were numerous nonunion contractors bidding on an invitational basis to work on the Respondent's building project and aksed if the Respondent was aware that they all were nonunion. When told that the Respondent knew of this, Smiley stated that his Union would appreciate the Respondent's using union contractors who paid decent wages and afforded decent conditions to their workers. The Respondent's official reiterated that he was aware of the nonunion status of certain contractors but that this meant nothing to him.

Smiley related that he had decided to picket on Thursday, June 12, the day before the line was established, and had visited the Respondent's DuBois facility on that day in advance of the picketing.

When the two Local 66 pickets posted by Smiley appeared in front of the gate reserved for the Respondent's employees on June 13 at 7 a.m., the respective employees of the Respondent and Leach had not yet arrived for work. Each picket wore a sign which read as follows:

HAROLD N. LEACH
(Working on this UNITED
ELEC. COOPERATIVE job)
IS UNDERMINING
AREA WAGE RATES
INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL NO. 66
66A, B, C, D and R[6]

For June 13, Leach had assigned two men to work on the Respondent's project at a location close to the gate designated for use by the Respondent's employees. While Leach's men normally worked from 8 a.m. to 4:30 p.m., on June 13, they left the job around 1 p.m., after having worked 4-1/2 hours each. Their task that day was to run jack hammers to break up concrete that had been laid on the site. After leaving the job that day, Leach's employees did not return there again for another 9 or 10 days.

The Respondent's employees, represented by the Union, began to arrive for work around 7:15 a.m. However, none crossed the Operating Engineers' picket line to work, but, instead, gathered together outside the gate. While normally 22 employees report for work at the Respondent's DuBois facility, only 12 had been assigned to work there on June 13, the number that refused to cross the picket line.

Smiley[7] testified that, shortly after the picket line was set up, he was confronted by the Respondent's general manager, Widder, and Alex Porter, a supervisor. Widder told Smiley that he was on the Respondent's private property and that he wanted Smiley out of there. When Smiley refused to leave as he was exercising his rights on a township road, Widder threatened that he would call the police if the pickets were not removed. While the picketing continued that day, Smiley received at least one more such visit from Porter and additional visits by Widder. During these incidents, essentially the same things were said as during their first conversations.

Widder, in turn, related that he had approached Smiley at around 7 a.m. and identified himself to Smiley, who told him that he had brought the picketing on himself as the "Dodd Report" indicated that the Respondent was the only concern accepting nonunion bidders. Widder replied that the job had been contracted through open bidding and that the Respondent had been required to accept the lowest bid under the requirements of the Rural Electrification Administration (REA), which had to approve the bidder and the loan for the building. Widder then informed Smiley that he was on the Respondent's property, that there was a separate gate for contractors other than the one his Union was picketing and asked that Smiley move to the contractors' gate. Smiley refused.[8]

Widder testified that after a number of the Respondent's employees had gathered outside the employees' gate, rather than pass through the picket line, he went to them and asked if they were coming to work. Lawrence (Sam) Hulse, a crew chief,[9] replied that the men were not going to come until "Clayton comes off."[10] He told Widder that Lockett had called the men during the night before in anticipation of the picketing, and told them to wait.[11]

Lockett testified that about 7:30 a.m., on June 13, he received a telephone call from Widder at the Respondent's Clearfield facility, where he was scheduled to work that day. Widder asked if he knew that there was a picket line at the DuBois facility and that his fellows would not cross it. When Lockett denied knowing of this, Widder asked if Lockett was going to represent the men. Lockett agreed to come to DuBois immediately.

Lockett, accompanied by journeyman lineman LeRoy Cramer, arrived at the DuBois facility in a Respondent-owned truck, which he parked near where the Respondent's 12 employees were congregated. Lockett related that, after observing the pickets, he told the members of

[5] While the Respondent denies having had anyone named McDonald in its employ, it was stipulated that Joseph McLaughlin is the Respondent's manager of member services and a supervisor within the meaning of the Act. Although the name, McLaughlin, is not familiar to Smiley, I find that such a call was made in accordance with the positions of Smiley and the Respondent and that such a communication did occur.

[6] The designations "A, B, C, D and R" stand for branches representing various specialized phases of work performed by members of Local 66. For example, "C" branch is for shops, the "D" branch is for surveyors, and the "R" branch is for apprentices. Smiley has responsibility for all branches of his Local.

[7] Smiley remained at the Respondent's premises for about 2 hours after the start of the picketing, and was there intermittently thereafter.

[8] It is undisputed that the Local 66 picketers were located in front of the gate that had been marked for the use of the Respondent's employees, rather than the gate designated by a sign for the use of contract employees. It is also clear that, during the day that the picketing lasted, the pickets did not stay on the public road outside the facility, but also occasionally ventured short distances onto the Respondent's property.

[9] The parties stipulated that crew chiefs are not supervisors under the Act, but are members of the bargaining unit.

[10] This was a reference to Clayton A. Lockett Jr. who then had been chief union steward for about 10 years under Local 521 and the Union. In that capacity, Lockett had attended all contract negotiating sessions on behalf of the respective locals. He has been employed by the Respondent for about 35 years, currently as a chief lineman.

[11] Smiley denied having given advance notice to the Union of his intent to picket, and Lockett and Hulse both deny that Lockett had instructed members of the unit on June 12 not to cross the Operating Engineers' picket line should one be established.

his union that he was not certain as to whether they, the Respondent's employees, were acting legally, and announced that he was going to talk to the Union's business agent, James W. Brinker.[12]

Accompanied by employee Sam Hulse, Lockett walked to one of the Respondent's buildings to telephone Brinker. As they neared their destination, they were approached by Widder and James Corbett, the Respondent's director of engineering and operations. Widder asked if the men were going to cross the picket line and go to work. Lockett, in turn, asked if the Company was going to give the men police protection. Corbett inquired if Lockett wanted the Company to call the cops.[13] When Widder was asked what he thought about the idea, he replied, "The hell with it!"

Hulse returned to the other men and Lockett went on to call Brinker, whom he eventually reached around 9:15 a.m. in Johnstown, Pennsylvania. Brinker, on hearing the situation, promised to come to DuBois as quickly as he could and told Lockett to wait there for him.

Brinker testified that, accompanied by Union President Chauncey Smith, who had been traveling with him, he had arrived at the DuBois site shortly before noon, parked near the employees' entryway, and approached the pickets. Although their signs identified them, he asked where they were from. The men replied that they were informational pickets from Operating Engineers, Local 66, that they were picketing because the Respondent was employing a nonunion contractor, and that their local felt that the Respondent was undermining wages and taking away their right to work in the area. In response to Brinker's inquiry as to how the Respondent was taking the establishment of their line, they told him that the Respondent had not seemed too upset and had not asked them to leave, or they would not be there. The pickets informed Brinker that all his people had been honoring their picket line.

Brinker then went to speak to his own members where they were gathered, approximately 150 feet away. When he asked why they had not crossed the picket line, the men replied that they were honoring it.

Brinker reminded the group that they knew of the problem that the Union had with Widder when two bargaining unit employees recently were suspended for leaving the DuBois facility through the contractors' gate rather than through the gate reserved for employees. This infraction might have been de minimis to the Union but the Employer had taken the matter seriously and Widder's reaction had been heated.[14] Brinker told his members that they all knew how difficult Widder was in his relationship with the Union. If he knew Widder, the latter probably would take the position that they were acting illegally, file charges against the Union, and suspend the employees. Should these incidents occur, the Union would be getting into a big ball game, and probably become involved in litigation to prove their point. Brinker, accordingly, told the men that he would appreciate their going to work. They had honored the other union's picket line long enough to prove that they had the right and had exercised it. He again urged the men to go to work, but they did not agree to do so.

At Brinker's invitation, Lockett and Union President Smith accompanied him to talk to Widder, which they did upon Widder's return to his office around 1:15 p.m.[15] According to Brinker, he began by telling Widder that Local 1124 did not endorse, condone, or encourage the activities of the individuals who were not crossing the picket line. However, that was the Union's position as an institution and the persons involved did have their own individual right to do as they saw fit with regard to crossing the picket line. Brinker denied having stated that the employees' actions in honoring the Operating Engineers' picket line was in violation of the "no-strike" clause of the collective-bargaining agreement and denied that such a charge was made by management.

According to Brinker, Widder then accepted his invitation to accompany him to the picket line where, Brinker asserted, he again would attempt to encourage the employees to go to work.[16] Accordingly, all who were present left Widder's office and walked with Brinker past the pickets to where the Respondent's employees had gathered. Without speaking further to the pickets, Brinker asked his members to go to work. When no one moved to comply, Brinker told the group that if there were any stewards among them he would consider removing them from office if they failed to go to work, not to interfere with their rights, but because, as business agent, he wanted to get this matter resolved before the Union became involved in a big hassle. Brinker stated his view that any steward should respect the business agent's decision by returning to work.

Despite Brinker's directives, none of the men moved from where they were. The same individuals who had met earlier in Widder's office, including Lockett, returned there. Back in Widder's office, Brinker announced that, when he left, he would try one more time to get the men to work. Widder replied that he did not give a damn whether or not they went to work. They might as well go home because he had no work for them to do.

Brinker testified that, after leaving Widder's office for the second time on June 13, he did not again speak to the pickets but did have a brief conversation with Local

[12] Brinker, the Union's business manager for 3 years, presently negotiates and administers all its collective-bargaining agreements.

[13] At no time during the June 13 picketing did the Local 66 pickets conduct themselves in a menacing or threatening fashion.

[14] The parties stipulated that employees Harrie Hall and Jerry Shaffer had received 1-day suspensions from the Respondent for having exited on June 6 through the gate designated by a sign "For Contractor's Employees Only." This discipline was administered in accordance with Widder's May 27 memo. The Respondent since has complied with an arbitrator's award, dated February 9, 1981, finding that the suspensions were not warranted and that Hall and Shaffer should be reimbursed for their lost wages.

[15] Although Brinker and Lockett recalled that Corbett was present during the 1:15 meeting, Widder and Corbett deny that he was there, and Widder asserts that he was the only company official to meet with the union representatives at that time. Resolution of this point is not pivotal.

[16] Brinker and Lockett concurred that, during that meeting in Widder's office, Brinker relieved Lockett of his duties as union steward. Early in the next week, however, Lockett again became chief steward and continued in that position until about a week before the hearing in this matter.

66 business agent Smiley, then visiting the line. Brinker asked Smiley if any other people were honoring the picket line. Just then, a large tractor pulled up to where the pickets were but refused to go through. As the vehicle backed away, Smiley told Brinker that he guessed that that answered his question.[17] After some further discussion with his members, Brinker left the Respondent's premises.[18]

The Respondent's employees stayed together after Brinker's departure. About an hour later, shortly after 3 p.m., Widder met again with Lockett and Hulse. Lockett refused Widder's request at that time that he take an outage call.[19] After the refusal by Lockett and other employees to take the call, management officials Corbett and Porter were dispatched to restore service.

About 3:40 p.m., there was another outage call. This time, Hulse refused Widder's request that he take the call offered to Hulse as crew chief from the Brookville area where the problem arose.[20] That call was later handled by another crew chief from Brookville, not assigned to the DuBois facility at the time of the dispute.

On Saturday, June 14, Widder sent the following mailgram to Lockett:

> This is a confirmation copy of a previously phone-delivered telegram.
>
> Your Local #1154 [sic] employees are in clear violation of our collective bargaining agreement. Unless these people report to work on Monday morning, June 16th and convene working and continue to work thereafter this United Electrical [sic] Cooperative will have no choice but to make alternate arrangements to perform necessary cooperative work. This could result in permanent termination of employment for many of your present employees.

The picket line remained only during June 13 and on Monday, June 16, all of the Respondent's employees reported for work at their regular starting time. While the line was in place, however, in addition to the tractor that refused to cross the line, as described by Brinker, Lockett testified that two employees of Central Electric Cooperative, Parker, Pennsylvania, had refused to drive their truck through the line to pick up a regulator, and left emptyhanded. Hulse also related that one Dale Barnes had not brought a crane onto the Respondent's premises, as scheduled. Lockett and Hulse both denied that the Central Electric Cooperative employees and Barnes, respectively, had refused to cross the line on their advice.

On June 16, the Respondent, over Widder's signature, sent the following letter to each of the employees who had refused to cross the picket line on June 13, except Lockett:

> The time has come to remind you of your responsibility to the Cooperative. I was thoroughly disappointed with your actions of the past weekend.
>
> Beginning Friday, June 13, 1980,[21] you participated in an illegal strike against United Electric Cooperative, Inc., in clear violation of your contractual obligations and in violation of the National Labor Relations Act. You are hereby suspended from all work beginning Monday, June 16, 1980, at 4:00 p.m., EDST, and continuing until Friday, midnight, June 20, 1980.
>
> Any repetition of this kind of conduct during the remainder of our agreement will result in termination of your employment.[22]

Also on June 16, Widder sent a separate letter to Lockett, which opened with the same initial paragraph, stating disappointment, as did the above-quoted letter sent to the other employees. This letter continued:

> Beginning Friday, June 13, 1980, you participated in an illegal strike against United Electric Cooperative, Inc., in clear violation of your contractual obligations and in violation of the National Labor Relations Act. You are hereby suspended from all work beginning Monday, June 16, 1980, at 4 p.m., EDST, and continuing until Friday, midnight, June 20, 1980.
>
> In addition, bcause of your failure to responsibly perform your duties as Union Steward including your failure to implement the direct instructions of James Brinker, Business Manager of Local 1124, you are additionally suspended for a period of one (1) week beginning Monday, June 23, 1980, at 7:30 a.m. and continuing until Friday, midnight, June 27, 1980.
>
> Any repetition of this kind of conduct during the remainder of our agreement will result in termination of your employment.

On June 19, the Union filed grievances protesting the suspension, including a separate grievance for the suspension of Lockett for a second week, the Respondent denied these grievances through the third step on August 26, but they were withdrawn on December 16 by the

[17] Smiley recalled that his conversation with Brinker near the picket line had occurred that day between noon and 1:30 p.m. The two men were acquainted. When Brinker asked what the problem was, Smiley replied that he was picketing because a nonunion contractor was working on the premises, paying its employees small wages. Although Brinker agreed that this was Smiley's right, he told Smiley that he was going to encourage his men to go to work.

[18] Brinker, too, denied having had direct knowledge before June 13 that picketing would take place at the Respondent's premises, but recalled that, in late May, he had phoned Widder to advise of the possibility that the craft unions would picket if he selected a nonunion contractor. Should this occur, he told Widder, it also was possible that the Respondent's employees would not cross such a picket line. His local did not condone the honoring by its members of picket lines of other unions, but, as individuals, they had their own rights over which he had no control. Brinker does not recall having described this conversation to Lockett and did not mention it to other members of the Union.

[19] Outage calls are emergencies requiring restoration of electric power.

[20] Hulse also had been acting as spokesman for the men in Lockett's absence.

[21] The date appears as corrected by the stipulation of the parties.

[22] Identical copies of the above letter were sent to employees Randall S. Williams, Emerson F. Blake, E. LeRoy Cramer, Jack Galentine, Gerald M. Hall, Harrie W. Hall, Lawrence (Sam) Hulse, Joseph Kelso, Arthur L. Kephart, John W. Read, Lee G. Spangler, Melvin Terwilliger, and Laverne E. Van Horn.

Union, which had elected to pursue its claims through the instant proceeding.[23]

Upon completion of their discipline, all affected employees returned to work.[24]

The minutes of the June 5 union meeting of the Respondent's employees, not being attended by Brinker, showed that Sam Hulse, in advance of the June 13 incident, had asked, "If the building contractors put up picket [sic] if we should cross it. Lockett said no." Lockett testified that his complete response had not been recorded in the minutes as he also had told Hulse that they individually would honor any picket line, anywhere. Lockett's response, however made, was not followed by further discussion. Lockett related that he had made this statement as steward based on a conversation with Brinker about 2 months before. During that talk, Lockett had asked whether the men should cross any picket line set up by others, and was told by Brinker that the local would not get into a hassle anywhere about not crossing a picket line, but that the men, as individuals, probably should honor such a picket line. Lockett denied having discussed the crossing of picket lines with the Respondent's employees again between June 5 and 13, when the Local 66 line was set up.

Widder and Corbett contradicted Brinker's testimony that he had urged his men to work on June 13 only to avoid further difficulty with the general manager and that neither he nor management had discussed that day whether the employees' refusal to cross the picket line was in violation of the "no-strike" provision of the contract. Rather, these witnesses asserted that Brinker had admitted freely that the contract was being breached and that he was ordering the men to work for that reason.

Widder testified that, after the employees had told him at 7:30 a.m. that they were not going to go to work until Lockett arrived, he had called Lockett at Clearfield, about 22 miles from DuBois. Lockett promised that he would come to DuBois right away, and, with LeRoy Cramer, arrived between 8:15 and 8:30 a.m.

Widder saw Lockett emerge from the service truck and talk to other union members congregated near the driveway. Lockett and Hulse then walked onto the Respondent's premises, passing Widder without recognition. As they went by, Widder asked Lockett what he was going to do. Lockett told him that he was going to use the telephone and then talk to Widder.

A few minutes after Lockett entered the service building, Widder walked in to find Lockett ending a telephone conversation. As Lockett walked out, he told Widder that he was going to wait for Brinker, who should be there around 10:30 a.m. Lockett then returned to where the men were assembled.

Widder related that he was the sole management representative during the 1:15 p.m. meeting in his office with Brinker, Union President Smith, and Lockett. Brinker told Widder that he did not condone what was going on out there, it was a violation of the contract, and he was going to get it stopped. Brinker announced that he was going out to tell the men to work and asked if Widder wanted to come with him. Widder replied that he would be happy to do so.

Accordingly, Widder walked with the three union men to where the other employees were gathered. Enroute, Brinker stopped and spoke very briefly to the pickets, telling them that he did not condone what his members were doing, and that he was going to order them back to work. Brinker said that he appreciated Local 66's problem as the Respondent had hired scab labor, but that that had no bearing on him and his Union had a contract to fulfill.

When he reached the employees, Brinker told them, too, that he did not condone what was going on. He announced that he was ordering them to go to work. To emphasize that they had a contract to honor, he was prepared to state that if there were any stewards in the group and they did not lead the employees back to work, they would be removed as stewards.

When no one moved, the same four men who had been in Widder's office at 1:15 p.m. walked back up the hill and returned there. At that time, Corbett was invited to join the meeting with Brinker, Lockett, Smith, and Widder. When Brinker, who had stopped to speak again to the pickets on the way back, arrived in Widder's office, he reiterated that he did not condone what was going on, the men were in violation of the contract, he had ordered them back to work, but did not know what they would do. Nothing else was said at that time. Brinker left the office, again went down to talk to the employees, and soon after departed with Smith.

Shortly thereafter, Widder approached Lockett and Hulse near the garage and asked if Lockett were going to bring the men back to work. Lockett said he would not. In response to Widder's reminder that he had heard Lockett ordered to take the men to work, Lockett declared that it was too late to bring them back, there was nothing for them to do. The men were going to sit out the balance of the day.

Around 2 p.m., Hulse was photographed with the pickets on the Respondent's property. Hulse explained that he had situated himself there to inform any other of the Respondent's employees who might be coming to work where the other employees were, if they chose not to cross the picket line. As described, later that afternoon, Lockett and Hulse, respectively, refused Widder's request that they respond to outage calls.

Some time after June 13, Local 5, International Brotherhood of Electrical Workers, AFL-CIO, the Union's sister local, picketed the Respondent's DuBois facility. However, unlike June 13, the Respondent's employees crossed this line and worked without incident.[25]

[23] The Union had rejected an offer by the Respondent to resolve the grievances by reducing the suspension periods for all concerned.

[24] Although the record shows that unit employees continued to refuse to handle emergency calls during the weekend of June 14 and 15, requiring assignment of supervisory personnel, the parties stipulated that the suspensions and disciplinary letters that are the reason for this proceeding were based solely on the refusal of the Respondent's employees on June 13 to cross the Operating Engineers' picket line to work, and not the employees' subsequent conduct.

[25] Lockett testified that he had heard of the Local 5 picket line while working at Clearfield. He had not discussed that matter with the members, but knew that none had honored the picket line.

2. The history of the "no strike" agreement

The record shows that the above-quoted "no-strike" provision of the current collective-bargaining agreement, article II, section 5, which the Respondent contends was breached on June 13, has been continued without change in the various contracts for this unit, starting with the first such accord, effective 1972, between the Respondent and Local 521, the Union's predecessor as bargaining agent.[26]

William Rauch, former business manager of Local 521,[27] testified that he attended all contract negotiating sessions for the 1972–1973 contract as did International representative John Sorvelli, chief steward Lockett, and steward Joe Kelso. The Respondent was represented at these negotiations by its attorney, James Q. Harty, General Manager James Nicholson,[28] and Supervisor Alex Porter.

When the Union proposed the language of the "no strike" clause, Nicholson stated that he was concerned that, once the employees were organized under such an agreement, they would be walking off the job or striking all the time. International representative Sorvelli reassured him that that would not be the case. Employees would not be walking off the job whenever they felt like it, and would honor the contract. However, Sorvelli continued, they also would honor legal picket lines. The provision, as described, was adopted in the first contract.

During the term of the first contract, the Respondent's employees had refused to cross a picket line established on October 27, 1972, also by Local 66, Operating Engineers, against the Sheraton Inn, then under construction. The pickets were posted along a roadway that led to the Sheraton Inn, but which also ran by or through the Respondent's DuBois facility. On that occasion, when the pickets appeared, the Respondent's employees already were on its premises ready for work. However, on seeing the pickets, the Respondent's employees refused to perform their duties, which included driving out past the line to service the Respondent's customers and power lines. The parties stipulated that, on that day, 11 employees were not paid by the Respondent for the hour they did not work during their regularly scheduled workday. The employees, however, declined the Respondent's offer to make up the lost compensation by working an additional hour that evening. Except for not being paid for the lost hour, the Respondent's employees were not disciplined for their refusal to work and no grievances were filed concerning that nonpayment.[29]

Local 521 Business Manager Rauch testified that during the 1972 picketing incident he and Nicholson discussed that matter in the latter's office. Nicholson, referring to the picket lines set up by the Operating Engineers, expressed his fear that the Respondent's employees would not come to work. He stated that if the workers did not report he would discipline them. Rauch replied that that was Nicholson's right under the terms of the contract. He reaffirmed that the employees would not walk off the job unless a legal picket line was set up. However, Rauch continued, the employees had the right to choose not to cross a legal picket line, where set up. This right existed not under the precise language of the contract but under the Union's unwritten policy.[30]

Lockett, who as chief steward, participated in the 1978 negotiations which led to the current agreement, testified that no new proposals were made by either side that the existing "no-strike" clause should be changed from the contracts previously negotiated for these employees by Local 521, and, again, that provision was reincorporated without modification.

3. Credibility

The most significant conflict in the testimony is whether, as the General Counsel and Union contend, Brinker had instructed his men to return to work on June 13 only to avoid further difficulties with the Respondent of the type that had resulted in the earlier disciplining of two employees for using the gate reserved for contractors rather than the employees' gate and to avoid other possible litigation, or whether, as the Respondent asserts, Brinker had told the employees to go to work because they were in violation of the collective-bargaining agreement. Brinker also denied that Widder, during their discussions, had accused the men of violating the "no-strike" agreement. From the entire record, I credit Widder's testimony that he was told by Brinker that the refusal of the employees to cross the Local 66 picket line was in violation of the contract and that Brinker had ordered the men to work for that reason.

Brinker's repeated instruction to the union members to go to work proceeded against the background of an existing "no-strike" agreement. Brinker's testimony that Widder had not claimed violation of that clause is in good measure countered by Widder's June 14 mailgram to Lockett, confirming his earlier phone-delivered telegram, which stated that the "employees are in clear violation of the collective bargaining agreement." Moreover, while Widder's testimony that Brinker had acknowledged that the refusal to cross the line violated the contract was corroborated by Corbett, albeit Widder's partisan, Brinker's denial of this was not similarly supported by the two union members to give testimony—Lockett and Hulse. Although Lockett had been in Widder's office during Widder's two meetings with Brinker, he could not recall anything that Brinker had said. Likewise, when he accompanied Brinker, Widder, and Smith to where the employees were, after the first session in

[26] Local 521, following an election, began to represent the Respondent's production and maintenance employees around October 1971. Negotiations for the first collective-bargaining agreement began in December of that year. The first contract was effective for 2 years, commencing January 1, 1972.

[27] Rauch, business manager of Local 521 from June 1970 to June 1975, represented the Respondent's unit employees during the negotiations that led to the 1972–73 contract.

[28] Nicholson was Widder's predecessor as general manager.

[29] Smiley testified that when the General Manager Nicholson approached him during the 1972 picketing to state his concern that several of the Respondent's employees were not working because of the picketing by Smiley's Union, Smiley had explained that it had not been his union's intention to hold up Nicholson's operations as the problem was not with the Respondent. Following this conversation, the Respondent's employees returned to work.

[30] Rauch also stated somewhat inconsistently that he had said, during that conversation, the right to honor other picket lines existed under the contract.

the office, to watch Brinker order the men to work, Lockett remained at a distance and could not hear what Brinker told the men. Hulse, called by the Respondent, did not testify concerning these matters.

In concluding that Brinker had ordered the men to work on June 13 on the ground that their refusal was in violation of the contract, it conversely is noted that Brinker never affirmatively took the position that his members should not cross the Local 66 picket line because they had a right under the contract not to do so. Rather, he summarily relieved Lockett of his duties as chief steward for refusing to lead the men to work and repeatedly stated his view that the men should work to Smiley, to Widder, and to the members of his Union. Thereafter, when a sister local to the Union picketed at the DuBois facility, the Respondent's employees crossed the line to work.

I also credit Widder's denial that during the second meeting in his office, he had told Brinker and the others that he "did not give a damn" whether or not the men went to work and they might as well go home as he had no work for them to do. Such a stance by Widder would have been very inconsistent with the Respondent's work requirements in servicing recurring emergency power outages. In fact, it is undisputed that later that afternoon Lockett and Hulse, respectively, refused requests by Widder that they respond to two such calls.

C. *Discussion and Conclusions*

Administrative Law Judge Stevenson, in her Board-approved decision in *St. Regis Paper Co.*,[31] restated the general rule as follows:

> As the right of employees to honor a picket line of a union other than their own is a right granted by statute, the Board will not infer that the employees own union has waived their right to engage in sympathy strikes unless the waiver is clear and unmistakable.[7] It is now Board policy not to infer such a waiver solely from an agreement proscribing "any strike, walkout, slowdown, or other interruption of work" . . . . The Board considers contract provisions like this, which do not specifically refer to sympathy strikes or crossing picket lines, to be ambiguous and will find waiver in them only where the parties' intent to waive is clearly evident from the relevant bargaining history.[8]

The rationale for this view is that ordinarily "no-strike" clauses are in consideration for binding arbitration of disputes between parties. Therefore, if the dispute is arbitrable, it is presumed that the "no-strike" agreement prohibits employees from engaging in work stoppages in furtherance of that dispute. However, as a sympathy strike involves a dispute or disputes which are not subject to arbitration between the parties to the "no-strike" agreement, the "no-strike" agreement, absent other evidence, will not be deemed to be a waiver of the right of unit employees to honor a picket line of a union other than their own.

As in *St. Regis Paper Co.*, supra, the Board, in finding waiver of the right to engage in sympathy strikes, has related back, giving particular attention to contract language and bargaining history. However, in examining continuing bargaining relationships, the Board also has looked forward to recognize, in a variety of areas, that a union, during the term of its collective-bargaining agreement, by its actions or by what it does not do, can waive statutorily protected rights of its member-employees, even to their detriment.[32]

There is little in the contract language or bargaining history to support the Respondent's contention that the "no-strike" agreement was intended to bar sympathy strikes. Although the last sentence in the "no-strike" provision of the contract expresses "the mutual desire of both parties to provide uninterrupted service to the Cooperative membership," that language is insufficient to establish a "clear and unmistakable" intent to relinquish the employees' right to engage in sympathy work stoppages.[33] Similarly, the other above-quoted contract clauses relied on by the Respondent, such as agreement for "continuity of service" and observance of the Respondent's rules and regulations, including specified work hours, also are not sufficiently specific to constitute clear contractual waiver as none of these other cited provisions prohibits or otherwise refers to work stoppages out of sympathy with or in observance of picket lines of other unions. Rather, those contract clauses, at most, merely relate to agreed standards to be adhered to by the employees when at work.

Nor does the bargaining history sustain the Respondent's position. The "no-strike" provision in effect since 1972 included no references to sympathy strikes even though then General Manager Nicholson had been told by the Local 521 representatives, during the 1971 negotiations, that employees would honor legal picket lines, although they otherwise would not walk off the job.

In spite of Nicholson's declaration to Local 521 official Rauch in 1972, when the Respondent's employees were refusing to cross the nearby picket line directed at the Sheraton Inn, that he would discipline employees who did not report to work, Rauch, in reply, had reaffirmed

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[7] *International Union of Operating Engineers, Local Union 18, AFL-CIO (Davis-McKee, Inc).*, 238 NLRB 652 (1978); *Keller-Crescent Company, a Division of Mosler*, 217 NLRB 685 (1975), enforcement denied 538 F.2d 1231 (7th Cir. 1976); *Gary-Hobart Water Corporation*, 210 NLRB 742 (1974), enfd. 511 F.2d 284 (7th Cir. 1977).

[8] *Daniel Construction Company Inc.*, 239 NLRB 1335 (1979); *W-I Canteen Service, Inc.*, 238 NLRB 609, fn. 1 (1978), enforcement denied 606 F.2d 738 (7th Cir. 1979). Accord: *Chevron U.S.A., Inc.*, 244 NLRB 108 (1979); *International Union of Operating Engineers, Local Union 18, AFL-CIO (Davis-McKee, Inc.)*, supra; *Keller-Crescent Company, a Division of Mosler*, supra; *Gary-Hobart Water Corporation*, supra; *Kellogg Company*, 189 NLRB 948 (1971), enfd. 457 F.2d 519 (6th Cir. 1972).

[31] 253 NLRB 1224, 1227 (1981).

[32] *Lange Co.*, 222 NLRB 558, 563 (1976) (waiver of bargaining concerning layoffs and transfers); *ABC Transnational Transport*, 244 NLRB 660, 665 (1979) (waiver of bargaining as to management's decision to close seven terminals and to transfer work). More immediate precedent concerning waiver of the right to engage in sympathy strikes arising during contract term will be considered below.

[33] *Operating Engineers Local 18 (Davis-McKee, Inc.)*, supra; *Gary-Hobart Water Corp.*, supra.

the employees' right to refuse to cross legal picket lines and, in fact, the employees who did not participate in the hour-long work stoppage were not disciplined. They merely were not paid for the time they did not work, compensation that they, as hourly rated workers, were not entitled to receive in any event. These employees even were given the opportunity to recover the lost hour's pay by working later that day, which they declined apparently for personal convenience. Unlike the situation in 1980, the employees in 1972 had received no warning letters and were not suspended.

Although it is understandable that the Respondent's reaction to the 1972 incident, which lasted but an hour, would be milder than the daylong stoppage in 1980, where the resulting dislocation was much greater, there is no basis for construing from the parties' conduct surrounding the 1972 work stoppage that precedent had been created for the Respondent's disciplining of employees who participated in sympathy strikes. Likewise, I find no precedential significance to the bargaining relationship in the failure of Local 521 or the employees to file grievances over the deduction of an hour's pay for time not worked, as there was no entitlement.

Waiver, then, in the present case can only be found from Brinker's conduct on June 13. Then, he repeatedly ordered his members to cross the Operating Engineers' picket line to work on the ground that their conduct was in violation of the "no-strike" agreement in the contract. He also expressed this view to Widder and Corbett, during his meetings in the former's office, and told Smiley that he would encourage his employees to work that day. Brinker also summarily removed Lockett from his long-term position as steward because of involvement in that work stoppage, urged any other stewards who might be present to lead the men to work, and openly agreed with the Respondent's position that the work stoppage was in violation of the contract. Brinker, thus, did all in his power to persuade his members to cross the line to work in enforcement of the "no-strike" agreement. Significantly, when a sister local sometime after June 13 picketed at the DuBois facility, these employees worked without incident.

In *Amcar Division*,[34] in concluding that there had been no waiver of the right to engage in sympathy strikes, the Board placed particular emphasis on its finding that:

> At no time during the 1978 IBEW Local 1 strike [leading to the action in that case] did the Union urge its unit employees to cross the picket line and report to work, nor did the Union ever state that the contract required the unit employees to do so. While certain officials and individuals associated with the Union may have indicated that they believed the Respondent's position was correct, we find greater significance in the fact that the Union never formally communicated that position to its members.[35]

On these facts, noting the strong position Brinker had taken on June 13 that the men were violating the contract in the context of the importance the Board, conversely, has placed on the absence of such conduct in *Amcar*, supra, I find that Brinker on June 13, as "the responsible union official," had waived the rights of bargaining unit employees to engage in the sympathy work stoppage. To find otherwise would dilute the Board's emphasis in *Amcar*, and contravene the above-noted principle that a collective-bargaining agent, during the term of its collective-bargaining agreement, by action or inaction, may waive protected rights of its members. A contrary finding also would serve to interfere with Brinker's real and apparent authority to effectively act as agent and spokesman for the Union in dealing with the Respondent and would insinuate the Board into the middle of a continuing bargaining relationship to ensure that no similarly placed union representative could speak for his membership, unless to their advantage. It would appear consistent with the Union's intent in this regard that when, sometime after June 13, a different union set up another picket line at the DuBois facility the employees crossed that line and worked without incident.

Not less compelling, however, is that the June 13 line observed by the Respondent's employees was engaged in unlawful secondary picketing as it was situated at the gate clearly designated for the Respondent's employees, rather than at a gate reserved for contractors. In *Chevron U.S.A.*,[36] the Board found that honoring an unlawful picket line constituted unprotected activity and that employees who refuse to cross a picket line that is unprotected by the Act lose the protection of Section 7, whether or not they had knowledge that the picket line was unprotected.[37]

In *Chevron U.S.A.*, supra, the Board also found that the respondent there could not be deprived of a defense that the picket line constituted unlawful secondary activity because no 8(b)(4)(B) charge had been filed against the picketing union or because that union had not been joined as a party to the proceeding.[38] In that case, as here as a representative picketing union testified fully concerning the conduct of the picketing, and all parties had the opportunity to examine and cross-examine him.

In *Sailors Union AFL (Moore Drydock)*,[39] the Board set forth four criteria to be met by a union in picketing at a common situs, defined as a location where several employers, including the primary employer, with whom the union has its dispute, are situated. These standards for lawful common situs picketing are: (1) the primary employer is then present on the site; (2) the primary em-

[34] 247 NLRB 1056, 1059 (1980), enf. denied 641 F.2d 561 (8th Cir. 1981).

[35] Cf. *American Cyanamid Co.*, 246 NLRB 87, 90 (1979), where the Board noted that while the union business manager's advice to member employees that their sympathy strike was in violation of the contract and his similar statements to management were insufficient, in themselves, to constitute a waiver of their right to engage in such activity, the Board, nonetheless, found that his conduct as "the responsible union official most closely connected with this event" was entitled to weight in deciding whether there was a waiver. The Board then ruled that in the circumstances of that case, where waiver was found from the bargaining history and special contract language, it was not necessary to decide whether the business manager's conduct constituted a waiver.

[36] 244 NLRB 1081, 1086 (1979).

[37] *American Telephone Co.*, 231 NLRB 556, 562 (1977); *Pacific Telephone Co.*, 107 NLRB 1547 (1954).

[38] Ibid. at 1085.

[39] 92 NLRB 547 (1950).

ployer then and there is engaged in its normal business; (3) the picketing is confined to places reasonably near the situs of the dispute; and (4) the picketing clearly identifies the primary employer with whom the union has a labor dispute. To call the *Moore Drydock* criteria into play, employers may establish at the common jobsite a separate gate or entrance reserved for the exclusive use of the employees of and persons dealing with the primary employer.

Accordingly, where a separate entrance or gate to the common situs is properly established and maintained for the use of the primary employer and its suppliers, the union is limited to picketing at that gate, and the union violates the Act when it pickets the neutral gates reserved for other employers at the common situs.[40]

In the present case, clearly marked separate gates were reserved for the use of employees of the Respondent and of contractors, respectively, such gates having been established, effective June 1, following telephone calls to the Respondent by Local 66 Business Manager Smiley and by the Union's business manager, Brinker, protesting the Respondent's possible use of nonunion contractors on its pending construction project. The gates were seriously observed by the Respondent. Notice of their implementation was given to the Respondent's employees on May 27, and Brinker testified that it had been necessary thereafter to arbitrate the disciplining of two unit employees who erroneously had departed through the gate reserved for contractors. Widder testified credibly that early in the morning of June 13, when the pickets first were posted by the employees' gate, he had told Smiley that there was a separate gate for contractors, but that Smiley had refused his request that the pickets be moved to that gate. Smiley's insistence on picketing Leach, then the only contractor on the jobsite, at the gate designated for the Respondent's employees instead of moving, as requested, to the gate reserved for contractors tended to maximize the impact of the picketing on the Respondent as a neutral employer. It, therefore, is found that the picket line erected by Local 66, Operating Engineers, at the gate designated for the Respondent's employees at its DuBois facility, was of an unlawful secondary nature as designed to involve the Respondent in that Union's dispute with Leach.

Accordingly, it is concluded that the Respondent did not violate the Act by suspending and issuing disciplinary letters to the 14 employees who did not cross the Operating Engineers picket line on June 13, not only because, as found above, their Union had waived their right to cross that line, even if lawfully erected, but also because the Operating Engineers' picket line was illegal and the sympathy strike by these employees in observance of the line similarly was not protected under the Act.[41]

However, in agreement with the General Counsel, I find that in suspending Lockett for a second week because of his position as union steward, rather than for the 1 week applied to the others, the Respondent violated Section 8(a)(3) and (1) of the Act. Even though it has been found that the picket line and the conduct of the Respondent's employees in refusing to cross it to work were not protected under the Act, "discrimination directed against an employee on the basis of his or her holding union office is contrary to the plain meaning of Section 8(a)(3) and would frustrate the policies of the Act if allowed to stand."[42]

In Lockett's June 16 disciplinary letter from Widder, he specifically was notified in one paragraph that he would be suspended for 1 workweek because of participation in an illegal strike in violation of his contractual obligations and the Act. However, in a separate paragraph, the letter informed Lockett that he also would be suspended for 1 more workweek because of his "failure to responsibly perform [his] duties as union steward," including his failure to implement Brinker's instructions to take the men to work. Under *Precision Castings* and *Gould*, supra, this second week of suspensions based on Lockett's union office was not protected under the Act.

Had Lockett's 2-week suspension been lumped together without separate statements as to the reason for each disciplinary interval, the entire 2-week period would have been tainted by the unlawful reason given. However, this was not the case as the June 16 letter clearly itemized the purpose for each week of suspension. Lockett's first week of discipline fully conformed to that lawfully given to the other employees, and, as with them, was not violative of the Act. However, the second week of suspension specifically was predicated on Lockett's role as union steward and was violative of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to

[40] *Plumbers Local 388 (Charles Featherly Construction)*, 252 NLRB 452, 460 (1980); *Plumbers Local 48 (Calvert Contractors)*, 249 NLRB 1183, 1186 (1980).

[41] *Electrical Workers IBEW Local 640 (Timber Buildings)*, 176 NLRB 150 (1969), cited by the General Counsel for the proposition that the criteria for lawful reserve gate picketing had not been met as a separate entryway had not been designated for Leach's exclusive use, to distinguish that contractor from others, is not germane. In *Timber Buildings*, although the picketing union had been notified that a separate gate would be reserved for the exclusive use of its target, the primary employer, instead, a makeshift gate was set up on the generally unenclosed situs, with a sign indicating that the gate was for the use of eight employers, including the primary. In addition, there was a second makeshift contractors' gate on the situs posted with the names of 16 other subcontractors, separated from the first gate by a strand of wire. In the resulting confusion, subcontractors frequently failed to observe the posted gates, a problem enhanced by the general contractor's conduct in furnishing the Union with untrue information as to when the primary employer's employees would be on the site, while making an "undercover agreement" with the primary employer as to when its employees would be called to the project. Here, none of those chaotic factors was present. As there is no showing that any contractor but Leach was on the jobsite on June 13, there is no basis for confusion on the part of the picketing union as to whom the contractors' gate applied, and the Respondent clearly intended strict observance of the separate gates, as evidenced by the discipline given to employees Hall and Shaffer, who earlier had used the wrong exitway.

[42] *Precision Castings Corp.*, 233 NLRB 183, 184 (1977); *Gould Corp.*, 237 NLRB 881 (1978), enf. denied 612 F.2d 728 (3d Cir. 1979).

lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 1124, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By suspending Clayton A. Lockett Jr. for a second workweek because of his position as union steward, following participation in the sympathy strike of June 13, 1980, and by giving him the disciplinary letter, dated June 16, 1980, referring to his union office as the ground for further suspension, the Respondent violated Section 8(a)(3) and (1) of the Act.

4. Except as specified above, the Respondent has not committed unfair labor practices alleged in the complaint.

THE REMEDY

Having found that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending Clayton A. Lockett Jr. because of his office as union steward and for having given him a disciplinary letter referring to his union office as ground for the unlawful second week of suspension, it is recommended that the Respondent be required to cease and desist therefrom,[43] and to make Lockett whole for any loss of earnings he may have suffered as the result of his suspension from Monday, June 23, 1980, 7 a.m., until Friday, midnight, June 27, 1980, with backpay and interest thereon to be computed in the manner set forth in *F. W. Woolworth Co.*,[44] and *Florida Steel Corp.*[45]

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER[46]

The Respondent, United Electric Cooperative, Inc., DuBois, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending and issuing disciplinary letters to employees who participate in work stoppages out of sympathy with other unions because they held positions as union stewards.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Make whole Clayton A. Lockett Jr. for any loss of earnings he may have suffered as a result of his suspension by the Respondent from Monday, June 23, 1980, 7:30 a.m., until Friday, midnight, June 27, 1980, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from the Respondent's personnel and other records, all references to the disciplinary action taken against Lockett during the above-noted period because of his union office, and revoke the disciplinary letter, dated June 16, 1980, to delete therefrom references to discipline based on Lockett's office in a labor organization.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in DuBois, Brookville, and Clearfield, Pennsylvania, copies of the attached notice[47] marked "Appendix."[48] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

[43] The Respondent also should be required to expunge from its personnel and other relevant records, all references to the disciplinary action taken against Lockett because of his union office, and to revoke the disciplinary letter, dated June 16, 1980, to delete therefrom references to a second week of suspension for reasons found unlawful herein.

[44] 90 NLRB 289 (1950).

[45] 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[46] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[47] Although the events considered in this matter occurred at the Respondent's DuBois facility, posting of the notice is warranted at Brookville and Clearfield, as well, as the collective-bargaining agreement covers employees at the three locations.

[48] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which we were represented by our attorney, it has been found that we have violated the National Labor Relations Act in certain respects. To correct and remedy these violations, we have been directed to take certain actions and to post this notice.

WE WILL NOT suspend, issue disciplinary notices to, or otherwise penalize our employees who participate in sympathy strikes because they held office in International Brotherhood of Electrical Workers, Local 1124, AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our Employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole Clayton A. Lockett Jr. with interest, for any loss of earnings he may have suffered as a result of his unlawful suspension from Monday, June 23, 1980, 7:30 a.m., until Friday, midnight, June 27, 1980.

WE WILL expunge from our personnel and other relevant records all references to the disciplinary action taken against Clayton A. Lockett Jr. during the above-described period and revoke the disciplinary letter previously given to him to delete therefrom references to discipline based on Lockett's official position in the above-named Union.

UNITED ELECTRIC COOPERATIVE, INC.